

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Adam Whitman,

Plaintiff,

V.

Lifewatch, Inc. a/k/a Lifewatch-USA,

Defendant.

Civil Action No.: 4:12-cv-03765

# FIRST AMENDED COMPLAINT

For this First Amended Complaint, the Plaintiff, Adam Whitman, by undersigned counsel, states as follows:

## JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").

2. This Court has original jurisdiction over Plaintiff's TCPA claims. Mims v. Arrow Fin. Serv., LLC, 132 S.Ct. 740 (2012).

3. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business here and a substantial portion of the acts giving rise to this action occurred here.

**PARTIES**

1. The Plaintiff, Adam Whitman (“Plaintiff”), is an adult individual residing in Missouri City, Texas.

2. The Defendant, Lifewatch, Inc. a/k/a Lifewatch-USA (“Lifewatch”), is an New York business entity with an address of 266 Merrick Road, Lynbrook, New York 11563.

### **FACTS**

3. On or about September 2012, Defendant began contacting Plaintiff using an automated telephone dialer system with an artificial or prerecorded voice (hereafter “Robocalls”).

4. Defendant placed as many as two calls daily to Plaintiff’s home telephone.

5. Plaintiff has no prior business relationship with Defendant and never gave his consent to be contacted at his home telephone.

6. On several occasions, Plaintiff asked a live representative from Defendant to stop all calls to Plaintiff as Plaintiff did not want their services.

7. Despite such, Defendant continued to hound Plaintiff with Robocalls.

#### **A. Plaintiff Suffered Actual Damages**

8. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendant’s unlawful conduct.

### **COUNT I** **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –** **47 U.S.C. § 227, et seq.**

9. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

10. Without prior consent the Defendant made telephone calls to the Plaintiff’s residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the Plaintiff in violation of 47 U.S.C. § 227(b)(1)(B).

11. The foregoing acts and omissions of the Defendant violations of the Telephone Consumer Protection Act, including the above-cited provision.

12. The Plaintiff is entitled to damages as a result of the Defendant's violations.

## **COUNT II**

### **INVASION OF PRIVACY BY INTRUSION INTO PRIVATE AFFAIRS**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. The Restatement of Torts, Second, § 652(b) defines intrusion upon seclusion as, "One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person."

15. Texas further recognizes the Plaintiff's right to be free from invasions of privacy, thus the Defendant violated Texas state law.

16. The Defendant intentionally intruded upon the Plaintiff's right to privacy by continually harassing the Plaintiff the above-referenced Robocalls.

17. The telephone calls made by the Defendant to the Plaintiff were so persistent and repeated with such frequency as to be considered, "hounding the plaintiff," and, "a substantial burden to her existence," thus satisfying the Restatement of Torts, Second, § 652(b) requirement for an invasion of privacy.

18. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendant.

19. All acts of the Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendant is subject to punitive damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against the

Defendant:

1. Statutory damages of \$500.00 dollars for each violation, pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
2. Attorney's costs and fees; and
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: January 22, 2013

Respectfully submitted,

By: /s/ Jody B. Burton

Jody B. Burton, Esq.  
CT Bar # 422773  
LEMBERG & ASSOCIATES L.L.C.  
A Connecticut Law Firm  
1100 Summer Street, 3<sup>rd</sup> Floor  
Stamford, CT 06905  
Telephone: (203) 653-2250  
Facsimile: (203) 653-3424

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2013, a true and correct copy of the foregoing First Amended Complaint was filed with the United States District Court for the Southern District of Texas using the CM/ECF system and that the document is available online.

By /s/Jody B. Burton  
Jody B. Burton, Esq.

for the

## Adam Whitman

Plaintiff

**V.**

Lifewatch, Inc. a/k/a Lifewatch-USA

Defendant

Civil Action No. 4:12-cv-03765

W. W. Meier  
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

Job #: 130166

Attorney: Lemberg & Associates, LLC Attention: Allison Bernier PH: 203 653 2250  
Address: 1100 Summer Street, 3rd Floor Stamford, CT 06905

Adam Whitman

vs

Lifewatch, Inc. a/k/a Lifewatch-USA

Plaintiff

Defendant

Index Number: 4:12 CV 03765

Date Filed:

Client's File No.: 7536 001

Court Date:

STATE OF NEW YORK, COUNTY OF NEW YORK, SS.:  
Terry Kelly, being sworn says:

## AFFIDAVIT OF SERVICE

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 2/1/2013, at 9:30 AM at: 266 Merrick Road, Lynbrook, NY 11563 Deponent served the within Summons and Complaint

On: Lifewatch, Inc a/k/a Lifewatch-USA, therein named.

☐ #1 INDIVIDUAL

By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.

☐ #2 SUITABLE AGE PERSONBy delivering thereat a true copy of each to ( ) a person of suitable age and discretion. Said premises is recipient's: ☐ actual place of business / employment ☐ dwelling house (usual place of abode) within the state.☐ #3 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendants

☐ actual place of business / employment ☐ dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find defendant or person of suitable age and discretion thereat having called there☐ #4 Corporation or Partnership or Trust or LLC

By delivering thereat a true copy of each to personally. Deponent knew said corporation/partnership/trust/LLC so served to be the corporation/partnership/trust/LLC described in said aforementioned document as said defendant and knew said individual to be thereof.

☐ #5 MAILINGOn , deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known ☐ Actual Place of Residence [X] Actual Place of Business, and deposited the envelope in an official depository, personally or via agency, under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.☐ #6 DESCRIPTIONSex: Female Color of skin: Color of hair: Blonde Glasses: No  
Age: 50 Height: 5'9" Weight: 140 Other Features:☐ #7 MILITARY SERVICE

I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

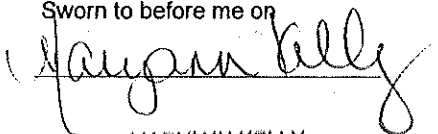
☐ #8 WITNESS FEES

Subpoena Fee Tendered in the amount of

☐ #9 OTHER

Sworn to before me on

FEB 03 2013



MARYANN KELLY

Notary Public, State of New York

No. 01KE5023108

Qualified in Nassau County

Commission Expires Jan. 31, 2014

  
Terry Kelly

NY SERVER LLC, 218 MAIN STREET #382, EAST SETAUKET, NY 11733